

The claimant was discharged because she failed to comply with the employer’s COVID-19 vaccination policy after the employer denied her request for a religious exemption. Held that the record contains sufficient findings that the claimant had sincerely held religious beliefs that constituted mitigating circumstances for failing to comply with the policy, and she may not be disqualified for deliberate misconduct in wilful disregard of the employer’s interest pursuant to G.L. c. 151A, § 25(e)(2).

**Board of Review
19 Staniford St., 4th Floor
Boston, MA 02114
Phone: 617-626-6400
Fax: 617-727-5874**

**Paul T. Fitzgerald, Esq.
Chairman
Charlene A. Stawicki, Esq.
Member
Michael J. Albano
Member**

Issue ID: 0073 9363 41

Introduction and Procedural History of this Appeal

The claimant appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA) to deny unemployment benefits. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant separated from her position with the employer on December 2, 2021. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on December 28, 2021. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended by both parties, the review examiner affirmed the agency’s initial determination and denied benefits in a decision rendered on May 12, 2022. We accepted the claimant’s application for review.

Benefits were denied after the review examiner determined that the claimant engaged in deliberate misconduct in wilful disregard of the employer’s interest and, thus, was disqualified under G.L. c. 151A, § 25(e)(2). After considering the recorded testimony and evidence from the hearing, the review examiner’s decision, and the claimant’s appeal, we remanded the case to the review examiner to review the record and make subsidiary findings of fact regarding the reason the claimant declined to comply with the employer’s COVID-19 vaccination policy. Thereafter, the review examiner issued her consolidated findings of fact. Our decision is based upon our review of the entire record.

The issue before the Board is whether the review examiner’s decision, which concluded that the claimant did not articulate a sincerely held religious belief that precluded her from complying with the employer’s COVID-19 vaccination mandate, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

The review examiner’s consolidated findings of fact and credibility assessment are set forth below in their entirety:

1. The claimant worked full-time as a release of information specialist for the employer, a healthcare provider, from 1/16/17 to 12/2/21.
2. The claimant worked in person and interacted face-to-face with co-workers and managers, and occasionally, with patients, prior to the start of the COVID-19 pandemic.
3. The claimant started working remotely after the start of the COVID-19 pandemic.
4. The employer intended for remote work to be temporary, as it was a response to the COVID-19 emergency.
5. On 9/15/21, the employer's CEO e-mailed all staff and explained that the employer was subject to the U.S. President's executive order mandating vaccines for all health care employers that receive Medicare or Medicaid funding.
6. The CEO's e-mail provides a link to the employer's COVID-19 vaccination policy and links to medical and religious exemption request forms.
7. The employer's COVID-19 policy states, "COVID-19 is a highly contagious and serious illness. As protecting the patients and workforce of [the employer] is central to our mission as a healthcare organization, and to comply with federal workplace safety regulations, all workforce members are required to be vaccinated against COVID-19 or obtain an approved exemption."
8. The policy is in place to slow the spread of COVID-19 and reduce the number of deaths and hospitalizations from COVID-19 and it is in place to comply with federal laws and regulations.
9. The policy states that all employees are mandated to receive their first dose of the COVID-19 vaccine, or obtain an approved exemption, by 11/1/21, and all employees must complete their full vaccination course or obtain an approved exemption by 12/15/21.
10. The policy states that employees who are granted an exemption will meet with their manager and Human Resources to determine whether their exemption can be accommodated in their present role or whether the workforce member should consider another role with the employer that can accommodate the exemption; if no vacancies are available, the workforce member may be subject to termination.
11. The policy does not provide for an alternative way for employees to continue working if they do not have an approved exemption or comply with the vaccine mandate.

12. The claimant received the 9/15/21 e-mail with links to the COVID-19 policy. She was aware of the policy.
13. All employees who did not receive the COVID-19 vaccine by the above deadlines and were not approved for a religious or medical exemption were discharged from employment.
14. The claimant requested a religious exemption on 10/4/21 and received a response from the employer on 10/23/21.
15. The employer's religious exemption form poses four questions: (1) "I identify my religious belief, practice, or observance as follows..." (2) "I have held this religious belief, practice, or observance for (state length of time)" (3) "This belief, practice, or observance prevents me from receiving the COVID19 vaccine because..." and (4) "In the past ten (10) years, have you received a vaccination against any other illness or disease (i.e. dTap, influenza, polio, measles, tuberculosis) if so, please explain why your belief, practice, or observance prevents you from being vaccinated now."
16. In response to questions one and two, the claimant said that she has held these religious beliefs since childhood. She stated, "I believe in and follow God and the principles laid out in His word and have a deep held religious belief that the mandatory COVID-19 vaccine violates my beliefs as a devout Catholic." She quoted the following portion of Corinthians, "Do you know that your bodies are temples of the Holy Spirit who is in you whom you have received from God? You are not your own. You were bought at a price. Therefore, honor God with your bodies."
17. The claimant also wrote, "To honor God I need to honor my body by choosing what gets put into it. The Church teaches Catholic individuals have the right to deny anything that morally goes against an individual's belief and is required to obey his or her conscience."
18. The claimant also wrote, "I do not receive any vaccine that goes against my moral and religious beliefs. I allow myself to receive certain vaccines. Catholics are not to be coerced into doing anything that goes against their morals or conscience if the Catholic individual is made aware of the potential risk and benefits of a vaccine and have a clear conscience when making their decision to receive or refuse then the Catholic Church promotes that the person should listen and follow their conscience. Catechism of the Catholic Church says man has the right to act in conscience and in freedom so as personally to make moral decisions he must not be forced to act contrary to his conscience nor must he be prevented from acting according to his conscience especially in religious matters."

19. In response to question three, the claimant wrote, “Catholics also make it clear no individual is morally obligated to receive vaccinations and therefore the individual must be voluntarily want to be vaccinated.”
20. In response to question four, the claimant wrote, “If I am forced to receive the vaccine it would go against not only God’s word but against my moral religious beliefs and does not sit well with my conscience to receive this vaccine as it is a betrayal to my religious practice.” She also referred to the First Amendment of U.S. Constitution giving individuals the right to freely exercise their religion and said that “mandating or denying an exemption would be a violation of this agreement.”
21. Regarding question four, the claimant did not answer the question about whether she received other vaccines in the past. She wrote, “These vaccines do not operate in the same way as a traditional vaccine. The possibility of genetically altering the human body, the body created by God, Creator in His image, is my reason for not wanting to take these novel gene therapy products.” She then quotes the above portion from Corinthians about honoring the lord with your body.
22. The employer denied the claimant’s request for a religious exemption, in writing. The denial states, “This requestor states they cannot receive the COVID-19 because it would genetically alter their body and compares the vaccine to gene therapy, yet that is demonstrably not true. No genes are altered by the approved COVID-19 vaccines. Reliance on false information is not a sincerely held religious belief, practice, or observance. Additionally, the requestor fails to state what about their Catholic faith prevents them from being vaccinated against COVID-19, aside from their having a God-given conscience and free will. This requestor certainly remains free to follow their conscience and decide if they think appropriate with respect to the vaccines but all decisions including this one, have consequences.”
23. Employees were given a two-week grace period from 11/1/21 to 11/15/21, if they had not yet received the first dose of the COVID-19 vaccine, before being put on suspension for not receiving the vaccine.
24. The claimant did not receive the COVID-19 vaccine on or before 11/15/21 and has yet to receive the vaccine.
25. The claimant was suspended on 11/15/21. She received a document that stated, “After 11:59 PM on this date, caregivers who have not received first dose of COVID-19 vaccine or an approved exemption or deferment will be placed on an unpaid leave of absence through 11:59 PM on 12/1/2021. If a caregiver is scheduled to work a shift that ends after 11:59 PM on 11/15, their suspension will begin at the end of that completed shift on 11/16. December 2, 2021. All caregivers who still have not received first dose of COVID-19 vaccine or an approved exemption or deferment will be terminated from the [the employer].”

26. The claimant's employment was terminated on 12/2/21.
27. The claimant's belief that to honor God she must honor her body by choosing what she puts into her body is a sincerely held religious belief. When faced with the risk of termination from employment for not receiving the vaccine, the claimant maintained this religious belief.
28. The evidence provided by the claimant about her religious belief was credible. Her testimony was detailed and was consistent with the fact-finding provided and documentation in the hearing record.

Ruling of the Board

In accordance with our statutory obligation, we review the record and the decision made by the review examiner to determine: (1) whether the consolidated findings are supported by substantial and credible evidence; and (2) whether the review examiner's original conclusion is free from error of law. After such review, the Board adopts the review examiner's consolidated findings of fact except as follows. We note that Consolidated Finding # 28 appears to be a credibility assessment, not a finding of fact. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. However, as discussed more fully below, we reject the review examiner's legal conclusion that the claimant engaged in deliberate misconduct in wilful disregard of the employer's interest.

Because the claimant was discharged from her employment, her qualification for benefits is governed by G.L. c. 151A, § 25(e)(2), which provides, in pertinent part, as follows:

[No waiting period shall be allowed and no benefits shall be paid to an individual under this chapter] . . . (e) For the period of unemployment next ensuing . . . after the individual has left work . . . (2) by discharge shown to the satisfaction of the commissioner by substantial and credible evidence to be attributable to deliberate misconduct in wilful disregard of the employing unit's interest, or to a knowing violation of a reasonable and uniformly enforced rule or policy of the employer, provided that such violation is not shown to be as a result of the employee's incompetence

(Emphasis added.) “[T]he grounds for disqualification in § 25(e)(2) are considered to be exceptions or defenses to an eligible employee's right to benefits, and the burdens of production and persuasion rest with the employer.” Still v. Comm'r of Department of Employment and Training, 423 Mass. 805, 809 (1996) (citations omitted).

The employer implemented a policy requiring that all employees receive a COVID-19 vaccination. Consolidated Findings ## 5–9. While the claimant acknowledged that she was aware of this policy, there is insufficient evidence in the record for us to determine whether the policy in question is uniformly enforced against individuals with similar reasons for seeking an exemption. We, therefore, consider only whether the claimant's actions constituted deliberate misconduct in wilful disregard of the employer's interest.

There was no dispute that the employer introduced a mandatory COVID-19 vaccination policy, requiring all employees to get vaccinated by December 2, 2021. Consolidated Findings # 25. There was also no dispute that the claimant chose not to get vaccinated by that deadline and, as a result, was terminated for failing to comply with the employer's policy. Consolidated Findings ## 24 and 26. However, the employer's decision to discharge the claimant is not a matter at issue in this case.

The only question before the Board is whether the claimant is entitled to unemployment benefits under G.L. c. 151A, § 25(e)(2). The purpose of the unemployment statute is to provide temporary relief to persons who are out of work and unable to secure work through no fault of their own. Connolly v. Dir. of Division of Unemployment Assistance, 460 Mass. 24 (2011) (further citations omitted). Accordingly, the dispositive issue in this case is whether, in engaging in the misconduct in question, the claimant acted deliberately and in wilful disregard of the employer's interest.

As the purpose of the employer's vaccination policy was to protect vulnerable patients and employees and to mitigate the impact of COVID-19, we agree that the employer's policy was reasonable. *See* Consolidated Findings ## 7 and 8. The claimant was aware of this policy and understood that the employer expected her to comply with it. Consolidated Finding # 12. It is, therefore, evident that her choice not to get the vaccine was deliberate.

Even though the employer denied her request for a religious exemption, the claimant ultimately declined to get vaccinated because she believed that taking the vaccine was contrary to her religious beliefs. *See* Consolidated Findings ## 14–22. Therefore, in considering whether the claimant acted in wilful disregard of the employer's interest, we must examine whether her religious beliefs constituted mitigating circumstances for her failure to comply with the employer's COVID-19 vaccination policy. Mitigating circumstances include factors that cause the misconduct and over which a claimant may have little or no control. *See* Shepherd v. Dir. of Division of Employment Security, 399 Mass. 737, 740 (1987).

The review examiner accepted the claimant's testimony regarding her religious belief as credible based upon its consistency and detail. Such assessments are within the scope of the fact finder's role, and, unless they are unreasonable in relation to the evidence presented, they will not be disturbed on appeal. *See* School Committee of Brockton v. Massachusetts Commission Against Discrimination, 423 Mass. 7, 15 (1996). Upon review of the record, we have accepted the review examiner's credibility assessment as being supported by a reasonable view of the evidence.

Pursuant to this credibility assessment, the review examiner expressly found that the claimant has a sincerely held religious belief that she needed to carefully choose what to put into her body in order to honor God. Consolidated Finding # 27. Because the review examiner also found that the claimant believed that the COVID vaccines would alter her body, she determined that the claimant had concluded that getting vaccinated for COVID-19 was contrary to her sincerely held religious belief. Consolidated Findings ## 21, 24, and 27. Therefore, the record before us, when considered in its entirety, indicates that the claimant's reason for refusing the vaccine was directly related to her sincerely held religious beliefs.

In the absence of any meaningful evidence detracting from these findings, we conclude that the claimant has demonstrated that her misconduct was attributable to mitigating circumstances. Stated another way, her failure to get vaccinated was not done in wilful disregard of the employer's interest. Rather, she was not complying with the policy because doing so would be in direct opposition to her sincerely held religious beliefs.

We, therefore, conclude as a matter of law that the claimant was not discharged for a knowing violation of a reasonable and uniformly enforced policy or deliberate misconduct in wilful disregard of the employer's interest within the meaning of G.L. c. 151A, § 25(e)(2).

The review examiner's decision is reversed. The claimant is entitled to receive benefits beginning the week of November 28, 2021, and for subsequent weeks if otherwise eligible.



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - October 27, 2022



Charlene A. Stawicki, Esq.
Member

Member Michael J. Albano did not participate in this decision.

**ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS
STATE DISTRICT COURT
(See Section 42, Chapter 151A, General Laws Enclosed)**

The last day to appeal this decision to a Massachusetts District Court is thirty days from the mail date on the first page of this decision. If that thirtieth day falls on a Saturday, Sunday, or legal holiday, the last day to appeal this decision is the business day next following the thirtieth day.

To locate the nearest Massachusetts District Court, see:
www.mass.gov/courts/court-info/courthouses

Please be advised that fees for services rendered by an attorney or agent to a claimant in connection with an appeal to the Board of Review are not payable unless submitted to the Board of Review for approval, under G.L. c. 151A, § 37.

LSW/rh